

# **LEGISLATION AND IJTIHAD IN ISLAM**

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# LEGISLATION AND IJTIHAD IN ISLAM

## 1

What is the sphere of action of legislation in Islam? And what is the position of ijtiḥād in it? In order to understand this concept, it is imperative that we get two things straight at the outset.\*

### SOVEREIGNTY OF GOD:

First, only God's sovereignty is accepted in Islam. According to the Qur'an's interpretation of monotheism, the one and the only God who is without any partners, is the object of worship not only in the religious sense but in the political and legal senses as well. He is the Sovereign Who is obeyed, the Authority Who commands and forbids and the Legislator.

The Qur'an presents God's legal sovereignty as clearly and forcefully as it presents the creed of God's religious divinity. For the Qur'an, these two positions of God are but necessary requirements of His divinity which cannot be separated. The denial of any of these is a definitive denial of God's divinity. It does not even leave any room for the doubt that by divine law it perhaps meant the natural law. On the

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\* Under the auspices of Punjab University, Lahore, International Islamic Colloquium was held on 29 December to 8 January in 1957-8. Syed Maududi presented his paper on the topic under discussion at the colloquium in its session on 3<sup>rd</sup> January. A book, comprising of the papers read at the colloquium and its proceedings was published by Punjab University Press, Lahore titled 'International Islamic Colloquium' in 1960. The articles contained in it are in three languages: English, Arabic and Urdu.

contrary, it raises its call on the foundation that man should accept that Shariah-Law of God in his moral and social life which God has been sending to him through His prophets.

It names the embracing of this Shariah-Law and the withdrawing of man's claim to autonomy as 'Islam' (surrender). It denies this right of man in unambiguous terms that he could decide those matters on his own in which God and His Messenger have already made their decisions.

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ صِلًا مُمِيزًا

(الأعراب: ٣٦)

*It does not behove a believer, male or female, that when Allah and His Messenger have decided an affair they should exercise their choice. And whoever disobey's Allah and His Messenger has strayed to manifest error.*

(33:36)

## THE PROPHETHOOD OF MUHAMMAD (PEACE BE UPON HIM):

The second thing, which is as important in Islam as monotheism, is that Muhammad (peace be upon him) is God's last prophet.

Actually, this is the thing by which the concept of monotheism takes practical form from being just a concept. And it is on this that the entire structure of Islam's total way of life is built. As per this creed, the teachings brought by the previous prophets of God have been assembled, with a lot of important additions, in the teachings of Muhammad (peace be upon him). That is why, it is the only authentic source of divine guidance and law now and no further guidance and law are going to come from God to which man needs to turn. This Muhammadan teaching is that Supreme Law which represents the Will of the Highest Authority. We get this Law in two forms from Muhammad (peace be upon him):

- Qur'an, which is comprised of the commandments and instructions of the Lord of the universe, word for word.
- The excellent example of conduct set Muhammad (peace be upon him) or his Sunnah which explains and clarifies the purport of the Qur'an.

Muhammad (peace be upon him) was not just God's message-bearer. His job was nothing more than delivering His Book to His slaves. Rather he was a God-appointed guide, ruler and teacher. His job was to explain the Divine Law through his words and deeds, explain its true purport, train people according to its spirit, work to reform the society by organizing them into a community. And show to the world how a system of an entire culture is established on the principles of Islam by giving shaping this community into a virtuous and a reformer state. All this work of the prophet which he accomplished in 23 years of his prophetic life is the Sunnah which along with the Qur'an creates and completes the Supreme Law of the Highest Authority. This Supreme Law is called the 'Shariah' in the Islamic terminology.

### **THE SPHERE OF ACTION OF LEGISLATION:**

At first sight, a man, after hearing all these truths, could assume that: "in this scenario, there is absolutely no room for human legislation in an Islamic state because here only God is the Legislator. What Muslims are supposed to do is to obey the Divine Law given by the Messenger". But the fact of the matter is that Islam does not totally negate human legislation but rather it limits it within the supremacy of the Divine Law.

What is the sphere of human legislation under this Supreme Law and within its bounds? I shall explain it briefly here:

**Interpretation of Commandments:** Of the many affairs of human life, there is one aspect regarding which the Qur'an and the Sunnah give clear and categorical commandment

and made a specific rule. In such matters, no jurist, judge or legislative body could change the commandment of the Shariah set by it. This does not mean that there is no room for legislation in it. The sphere of action of human legislation in these matters is that first and foremost it must be known what the commandment actually is? Then its meaning and purpose should be determined and research should be done to know in what circumstances and events the commandment in question is for? Then the ways for the application of this commandment and the details of this overall commandment be determined. Along with all this, it should also be determined to what extent and how much room is there to work around these commandments and rules in exceptional circumstances and events.

**Analogy:** The second kind concerns those matter about which the Shariah has not given any instruction but it gives instruction regarding matters that resemble these matters. The way to legislate in this sphere is that by understanding the causes of the commandments, these commandments will be enforced on all those matters in which these causes are found and all those matters will be exceptionalized in which these causes are not found.

**Inference:** Another kind is of those matters in which the Shariah has not specified any commandments but has given some comprehensive principles or the Lawmaker has expressed His intention as to what He likes which must be promoted and what He dislikes which must be discouraged and opposed. The process of legislation in such matters is to understand the principles of the Shariah or the intention of the Lawmaker and such laws be written for practical issues which are based on these principles and which fulfil the intention of the Lawmaker.

**THE SPHERE OF INDEPENDENT LEGISLATION:**

Apart from these, is a big kind of matters of those about which the Shariah is totally silent. Neither it gives any direct commandment about it nor any guidance is found in it regarding matters resembling it that an analogy could be made about it. This silence is a proof of the fact that the Highest Authority Himself has given man the right to make decisions on his own. That is why, independent legislation can be made in such matters. However it should be done in a way which is in accordance with the spirit of Islam and its general principles, whose nature is not different from the overall nature of Islam and which fits well in the system of the Islamic life.

**IJTIHAD:** This whole process of legislation which makes Islam's legal system dynamic and develops it with changing circumstances of the time, can only be done with a special academic research and intellectual effort. This endeavour is called 'Ijtihad' in Islamic terminology. Its lexical meaning is to exert oneself to the utmost in doing something. Technically it means to exert oneself to the utmost to find out Islam's instruction or purport regarding the matter under discussion.

Some people understand Ijtihad to be the use of totally independent opinion. But any person who is acquainted with the nature of Islamic Law cannot fall for this misunderstanding. There is no room for a totally independent Ijtihad in such a kind of legal system. Here, the real law is the Qur'an and the Sunnah. The legislation which people can do should either be derived from there two sources or should be within the bounds of set by this law; bounds in which man has the freedom to use his opinion. An Ijtihad done independent of the real law is neither Islamic nor does it have any room in the legal system of Islam.

## NECESSARY QUALITIES FOR IJTIHAD:

Since the purpose of Ijtihad is not to replace the Divine Law with manmade law, rather to understand God's Law and make the legal system of Islam dynamic, matching the speed of times, that is why a healthy Ijtihad cannot be done without our lawmakers having the following qualities:

1. Belief in the Divine shariah, certainty in its truth, sincere will to follow it, lack of desire to be free from it and the desire to take objectives, principles and values from no source but God's Shariah.
2. Deep acquaintance with the Arabic language, its rules and literature because the Qur'an is revealed in this very language. Besides, the sources to know the Sunnah are in this language too.
3. The knowledge of the Qur'an and the Sunnah by which a man should not only learn the detailed instructions and their contexts but also understand the formulas and objectives of the Shariah. On one hand he should know what the overall scheme of Shariah is for the reformation of human life and on the other hand he should also know what the position of each department of life is in this overall scheme. He should have clear idea as to what lines does the Shariah want to organize it and what interests does it have in doing so? In other words, the knowledge of Qur'an and Sunnah are the basic requirements for Ijtihad which reaches to the essence of the Shariah.
4. Acquaintance with the works of previous mujtahids of the Ummah is not only required for Ijtihad training but also for the continuity of legal growth. In any case, the purpose of Ijtihad is not and should not be that every generation rebuilds the structure from the scratch by demolishing or abandoning the structure left by the previous generations.
5. Acquaintance with the conditions and circumstances of the practical life. Because it is to these that the

commandments, principles and rules of the Shariah will be applied.

6. Noble character as per Islamic standard of morality. Because without it, people can neither trust any Ijtihad nor will they respect such a legislation.

The purpose of enumerating all these qualities is not that every person who does Ijtihad had to first produce the proof that all these qualities are found in him rather. On the contrary the purpose is to make clear that if the Islamic Law could be developed on right lines through Ijtihad then it can happen only when the system of legal education and training is prepared by scholars who fullfill the basic centre. Any legislation done without this would neither get absorbed into the system of the Islamic Law nor would the Muslim society digest it like a pleasant food.

### **THE RIGHT WAY OF DOING IJTIHAD:**

Just as the acceptance of Ijtihad and the legislation based on it is dependent on the fact that the people doing Ijtihad should be qualified, it is also dependent on the fact that this Ijtihad be done the right way.

- A Mujtahid, whether he is interpreting the commandments or making analogy or inference, should base his argument on the Qur'an and the Sunnah.
- In fact, even in the sphere of 'permissibles', he should produce proof from the Qur'an and the Sunnah while doing independent legislation. He should prove that the Qur'an and the Sunnah have really not given commandment or set any rule in this matter nor have they provided any grounds for making analogy either. Then, whatever argument is made from the Qur'an and the Sunnah should definitively be based on the way which is well-established amongst the scholars.
- Apart from taking the language, its rules and the context into consideration, it is also necessary that the hadith narration which is being used in an issue as support



should be authentic as per the rules of the discipline. Other narrations related to the subject in question should also be taken into consideration and based on only one narration, a conclusion should not be drawn which goes against the established Sunnah.

Without bearing these things in mind, if Ijtihad is done according to one's own desires and even if it is given the position of law through political power, neither the collective conscience of Muslims would accept it nor will it become a part of Islamic legal system. The moment the political power, which enforced it, is overthrown this law will be thrown into the dust bin too.

## **HOW DOES IJTIHAD ACQUIRE THE STATUS OF LAW?**

Several ways are found in the Islamic legal system through which Ijtihad acquires the status of law:

- One, a consensus of the scholars of the Ummah.
- Two, Ijtihad of any person or group that goes on to getting general acceptance and people start following it on their own. A large number of Muslims have accepted the Hanafi, Shafa'ee, Maliki and Hanbali schools of jurisprudence.
- Three, a Muslim government promulgates an Ijtihad to be its law. For instance the Ottoman empire or the Mughal empire of India declared the Hanafi school of jurisprudence to be the law of their empires.
- Four, an institution authorized by the constitution to make laws and it makes laws through Ijtihad.

Any Ijtihad done by scholars in ways other than the aforementioned methods will not enjoy the status of anything more than the fatwa. As for the decisions made by the Qadis (Islamic judges), they are surely enforced in specific cases as laws; cases the courts have declared their verdicts. And they also enjoy the status of being precedents.

But in reality, they are not laws. Even those decisions of the four rightly guided caliphs which they made as Qadis did not become laws in Islam. There is no concept of judge-made law in the Islamic legal system.

*(Monthly Tarjuman-ul-Qur'an, Lahore, January 1958)*

## 2

I shall try to give answers, as briefly as I can, to the objections raised against the contents of my article on the subject of legislation and Ijtihad in Islam\*.

The first objection is to that position which is given to the Sunnah alongside the Qur'an. In response to this objection, I shall present my points serially so that the issue is made clear to you.

1. This is an undeniable historical truth that Muhammad (peace be upon him), after being exalted to prophethood, did not settle for merely delivering the Qur'an alone. He led an all-encompassing movement as a result of which a Muslim society was born, a new order of culture and civilization came into existence and a state was established. So, the question is: in what capacity did Muhammad (peace be upon him) do all these things besides conveying the Qur'an? Either he did it as a prophet representing God's Will just as the Qur'an or his prophethood ends at reciting the Qur'an alone and he would be a mere Muslim whose words and actions enjoy no legal authorization and endorsement just like the rest of the Muslims. If the first thing is accepted then there is no way but to admit that the Sunnah too enjoys the legal authorization and endorsement along with the Qur'an.
2. As far as the Qur'an is concerned, it is very clear that Muhammad (peace be upon him) was not just a message-bearer but also a God-appointed guide, ruler and teacher

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\* A hadith denier raised objections to the contents of the above-mentioned article in the International Islamic Colloquium which were answered by Syed Maududi in that very Colloquium.

- whose obedience was obligatory upon the Muslims and whose life was declared to be the example for all the believers. As far as logic is concerned, it denies that a prophet is a prophet only to the extent of reciting God's word and afterwards he is just a common man. As far as Muslims are concerned, they have unanimously considered Muhammad (peace be upon him) to be an ultimate role model writly to be emulated. His dos and don'ts are obligatory since the beginning of Islam. Even a non-Muslim scholar could dispute this fact that Muslims have always believed in this status of Muhammad (peace be upon him) and it is on this basis that the Sunnah has been accepted to be the second source of Islam's legal system with Qur'an being the first. Now I don't know how could anyone challenge this legal status of the Sunnah unless and until he does not say categorically that Muhammad (peace be upon him) was a prophet only to the extent of reciting the Qur'an and after doing this job, his prophethood comes to an end. And if he were to make such a claim then he has to prove whether it is only he who is making this claim or does the Qur'an has given this status to the prophet? In the first case, his claim has no relation with Islam. In the second case, he has to substantiate his claim with proofs from the Qur'an.
3. After accepting the Sunnah to be a source of law in itself, the question that now arises is what is the way to know it? I say, as an answer to this question, that this is not the first time we are facing this issue to determine what Sunnah was left behind by the prophet some 1400 years ago. Two historical realities are undeniable:

One, the society which was formed since the beginning of Islam, based on the teachings of the Qur'an and the Sunnah of Muhammad (peace be upon him), is alive without any interruption. All its institutions are also functioning during this entire period. The close resemblance found in the Muslims of the whole world in their beliefs, thought processes, morals, values,

rituals, affairs, worldview and lifestyle, in which the element of harmony is stronger than disharmony, and which is the biggest reason for keeping them an Ummah despite their spread all over the world, is a clear proof that this society was established on only one Sunnah and this Sunnah was continually in force during all these long centuries. This is not a thing which is missing that we have to grope it in the dark to find it.

The second historical reality which is as shining as the first is that after the demise of the prophet (peace be upon him), Muslims have been constantly working to know what his established Sunnah is and whether any new thing has entered his way of life in a fake way. Since the Sunnah was law to them and verdicts had to be given in their courts based on the Sunnah and affairs had to be run as per the Sunnah from home to government, they could not be careless in verifying it. We have inherited scientific methods of its verification and the results thereof from the first caliphate of Islam to present day generation after generation. Without interruption, the work of every generation has been preserved.

If someone aims to understand these two realities properly and undertake an academic study of the ways to know the Sunnah then he would not have the doubt that this is some kind of a mystery which cannot be solved!

4. Undoubtedly, there have been many disputes in verifying and determining the Sunnah and it can continue in the future too. But such disputes have also occurred and will occur in determining the meaning of many of its commandments and instructions. If these disputes are not the reason to forsake the Qur'an then how could they be considered a reason to abandon the Sunnah? This principle was accepted earlier and there is no other way but to accept it that anyone who claims something to be a commandment from the Qur'an or the Sunnah must

substantiate with proof. If there is any weight in his claim then he can get it endorsed from the scholars or at least a large group of the Ummah. If his claim is weak from the point of view of the evidence then it would not work anyhow. This is the principle based on which millions of Muslims from different parts of the world agreed over any one school of jurisprudence and established their social system on any one interpretation of Qur'anic commandments or and any one compendium of established Sunnah.

The second objection to my article was that there was contradiction in my article i.e. the statement that nobody has the right to change the clear-cut commandments of the Qur'an and the Sunnah. The objector thinks that it is contradictory that the possibility of working around the commandments in exceptional conditions and circumstances can be determined by Ijtihad.

I could not understand what a contradiction was felt in this statement. Exceptions from a general rule during distress and unavoidable circumstances are found in every law of the world. Many examples of such exceptions are found in the Qur'an. The jurists have determined principles using these exceptions which must be taken into consideration when setting the limits and times of these exceptions. For instance:

الضرورات تبيح المحظورات

*Necessities permitted prohibitions*

المشقة تجلب التيسير

*Hardship brings facilitation*

The third objection is to all those people who have stated the conditions of Ijtihad in their articles which were read out in this colloquium. Since I am one of them, a reply to this objection is on me too.

I would say, please take a look once again at those conditions which I have stated and then tell me which of these conditions would you want to make null and void?

- The condition that those who do Ijtihad should have sincere intention to follow the Shariah and do not have the desire to transgress its limits?
- Or the condition that they should be well-acquainted with the language of the Qur'an and the Sunnah i.e. the Arabic language?
- Or the condition that they should have studied the Qur'an and the Sunnah to the extent that they had properly understood the system of the Shariah?
- Or the condition that they ought to take the works of earlier Mujtahids into consideration?
- Or the condition that they should be well-acquainted with issues and affairs of the world?
- Or the condition that they should not be wicked and lower than the standard of Islamic morality?

Please tell me any of these conditions which you think to be unnecessary!

To say that not more 10 to 12 people could be found in the entire Islamic world fulfilling these conditions is a very bad opinion regarding Muslims. Even our opponents might never have had such a bad opinion of us that scholars of such qualities are not more than 10 to 12 in the population of 400 to 500 million Muslims. Nevertheless, if you want to open the doors of Ijtihad to every Tom, Dick and Harry, then by all means, go ahead but do tell me how are you going to remove Ijtihad done by wicked, ignoramus and men of suspicious intent and character?

*(Monthly Tarjuman-ul-Qur'an, Lahore, January 1958)*

## 3

**QUERIES REGARDING IJTIHAD**

Scholars from different countries participated in the International Islamic Colloquium held in Lahore from 29<sup>th</sup> of December 1957 to 8<sup>th</sup> of January 1958. The scholars were both from the Muslim and the non-Muslim communities. During and after the Colloquium, the foreign delegates kept meeting with the intellectuals of Pakistan and trying to understand and explain the viewpoints and methodologies to each other. In this regard, many foreign dignitaries came to Syed Maududi's office to meet him from time to time. Among these scholars was renowned academic Wilfred Cantwell Smith. At first, Cantwell Smith (July 1912 - Feb 2000) was a professor in the Department of Islamic History at Aligarh Muslim University. Later, he was associated with F.C. College, Lahore. He was then associated with McGill University, Canada. At last, he was associated with teaching and research in the Department of Comparative Religions at Harvard University. He was one of the most famous orientalists and a guru to many of the Muslim world's modern educated experts. He participated in the Colloquium. Later, he expressed his doubts to Syed Maududi by writing to him a letter.

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**DR. CANTWELL SMITH'S LETTER TO SYED MAUDUDI**

Greetings my liege!

It was your kindness that last week you honoured me with your audience. I thank you from the bottom of my heart for this kindness. I benefited a lot from our face to face discussion. The thing that made me the happiest was that I had the good fortune of meeting you by myself and therefore, I was able to study your thought-process and

reasoning very closely. I could not have achieved it by just reading your books.

Since you have promised me, during our discussion, that you shall guide me in understanding the explanations put forth by you about Islam, I am emboldened to demand few favours from you. If it is not an inconvenience for you, would you please send me the Urdu and Arabic translations of this article of yours which you had presented in the Colloquium on the topic of Ijtihad? I have already read and reread its English translation Omit a few times. The way you have determined the meaning of Divine Law and defined Islam as surrender to worldly very Law was quite charming and interesting to me. I was quite impressed by this definition. This point is so important that now I have a desire to look at all those Arabic terms carefully in which this point has been explained. This is also the case with other points in your article. If you have any extra copies of the Urdu and Arabic translations of this article please do send me so that I could study them.

In this connection, another question arises at this point. In the English translation, you have termed the acceptance of the Divine Law and renouncing one's sovereignty as 'Islam'. Earlier, I used to think that bowing to God alone meant Islam. But to you, these two are one and the same and there is no contradiction between them. I have presented them as two separate things in the article which I read in the Colloquium. Since the Arabic and Urdu translators of my paper could not understand my viewpoint, whatever I am telling you now is based on my paper in English. Perhaps this explanation will clear the doubt which I had expressed when I met you and requested you in this connection that instead of focusing on man's relation with God, Jamat Islami merely lays stress on the external manifestations of religion. The answer that you gave me provided me the food for thought and encouraged me to contemplate. Nonetheless, the position that you took in your published paper creates this problem yet again. Does the real spirit of the religion of



Muslims have more to do with getting attached to the Shariah or their relationship with God (bowing: Islam)?

This also creates yet another problem: the nature of the relationship Muslim nations have with nations following other religions. A kind of ripples were generated in my thought-process and contemplation when I heard this statement of yours that consuming pork is an ordinary thing for a Christian; I fell short of properly understanding its meaning. As a Christian, I believe that if I want to consume pork then I have the right to do so and nothing can stand in my way but I am certain that if I were to do so then it would be hurt by it. Because as per your viewpoint, Shariah is the all-encompassing, divine and universal law. Following the law of Allah is obligatory on everyone. Even though it is only the Muslims who accept it as a whole. If I were to lie to you then you would find it unpleasant. Is there any such moral code which can be applied to all the human beings? Besides, are there any such principles and regulations following which is mandatory only for the Muslims?

I am not used to smoking and drinking which makes my Muslim friends very happy that I am following two of the principles of their religion even though I do it out of my own personal convictions. I have never smoked cigarette or drunk alcohol in my entire life. I feel that it is better (and God loves it too on this basis) that a man ought not to drink at all. And this is just as right for a Muslim as it is for a Christian or a Hindu or an atheist. But in the case of a Muslim, there is another dimension to it. A drunk Muslim not only destroys his health but rears a criminal conscience in himself. Because by consuming alcohol, he has committed an act which he considers it to be forbidden based on his creed.

Now the issue that needs solution is, would you people, as Muslims, not be happy if I or non-Muslims like me were to follow the Shariah Law? Though I admit that because of being non-Muslims, we cannot totally fulfil all the obligations of the Shariah as it should be. Your answer, in this regard, will probably be that as a Christian I ought to

follow the laws and rules of Christianity. But what attitude a Hindu or an atheist ought to have in this regard? Is an honest atheist not better than a dishonest believer (and because of which he is more liked by God)?

I am very sorry that I have troubled you for no reason and perhaps I might have taken advantage of your kindness quite a bit. But the only reason I am being bold is because I have spent my whole life trying to understand these issues especially those the resolutions of which could increase the chances of peace and reconciliation between nations.

Yours sincerely  
*Wilfred Cantwell Smith*

#### 4

Respected Mr. Smith!

I am grateful that you remembered me.

I am sending you the Arabic and Urdu translations of my article which you have asked for. The article was originally written in Urdu; both Arabic and English versions are its translations. Since you are well-versed in Urdu, it would be better to rely on the original Urdu version. Along with this, I am also sending you the note which I had penned down and presented in the Colloquium as a response to the criticisms against my paper.

### **ISLAM AND SHARIAH'S MUTUAL RELATIONSHIP:**

The answer to the question raised in your mind, related to the meaning of Islam, is that without a doubt the meaning of Islam is obedience to God. The necessary corollary of this obedience is obedience to God's Law because believing in God but denying His Law is incompatible. If you were to deliberate over the order in which I have explained this issue, the correct position will become quite clear to you. The order is this:

1. The Qur'an not only declares God to be Deity but Legal Sovereign too.
2. These two requirements are so inseparable from a monotheistic viewpoint that the denial of any one is denial of God.
3. As per this creed, the law of God the obedience of which becomes obligatory is not the law of nature but that law which God has revealed to His messengers the objective of which is to rectify our thoughts, perspectives, individual and social lives.
4. The basis of Qur'an's call is that human beings should submit to that guidance and law which God gave to them through His prophets (peace be upon them all) and relinquish their autonomy of their own accord in favor of God. This very thing is called 'Islam' in the language of the Qur'an. In other words, if someone was to say that he submits to God but neither submits to the guidance and commandments given by the prophets sent by God nor relinquishes his claim to autonomy then the Qur'an is not ready to call him a 'Muslim'.

Please try to understand the matter through this order. You will know it yourself that the question *'does the heart of a Muslim's faith not lie in his relation (submission to Islam) to God rather than to his relation to the Shariah?'* would not have even arisen because a Muslim's relationship of Islam (submission) to God automatically takes on the form of his relationship of Islam (submission) to God's Law (i.e. the Shariah) and this is such a natural prerequisite that Islam's relationship with God's Law ceases then there would not be any meaning in maintaining the relationship of Islam (submission) with God.

## **THE IMPORTANCE OF PRESERVING THE FORM OF ISLAM IN ORDER TO PRESERVE THE SPIRIT OF ISLAM:**

What I said about Christians consuming pork was in totally different context.

I was trying to explain to you what the importance of preserving the form of Islam is to the Muslims in order to preserve the spirit of Islam and why the natural consequence of any negligence or deviation from this form would be the alienation of a Muslim from the spirit of Islam as well. I have made this point quite clear to you through many examples. For instance, if a Muslim were to abandon prayer then inevitably he would start turning away from all those obligations which are placed on him as rights of God and His slaves. Since prayer is the foremost obligation, he has to fulfil it by virtue of being a Muslim. If he were to abandon it knowing and accepting it to be an obligation, then one cannot expect from him any sense of truth and duty. Similarly, there are things which are declared forbidden and grave sins in Islam. If a Muslim were to commit them despite knowing them to be forbidden and sinful then you cannot expect him to refrain from transgressing any moral limit or committing any wicked act as well.

I have told you, in this connection, that you people assume those Muslims who abandon their prayers or consume pork to be like you and welcome them as being closer to you. They indeed have come closer to you, but what you don't realize is that by transgressing those limits and violating those sanctities, they have fallen utterly lower than you morally. For you, prayer is not at all obligatory and pork consumption is ordinary. That is why, despite abandoning the prayer and consuming pork, you can still stay within the limits and respect the values which are respectable for you. But a Muslim who does this has reached you by transgressing those serious limits and violating those precious values that afterwards hardly anything would remain sacred for him in the world that he would hesitate to

trample them under his feet for his personal gain or selfishness.

That is why, I have requested you not to encourage those who violate the commandments of Islam because this is a manifestation of serious moral degradation in the Muslim society and moral degradation of any human society is harmful to not only that society but also the entire humanity.

### **WHAT THINGS DOES THE ISLAMIC GOVERNMENT OBLIGATE NON-MUSLIMS TO?**

What you said is correct in itself that: "since every sin is evil in itself in our view, we should not be liking the thing declared to be a sin by God's Shariah in the life of any human being".

This is exactly our position. We regard all the commandments of God to be true for all the human beings and we feel sorry for any human being violating them. It may be unimportant to him but to us it is not. However, if a non-Muslim were to live under an Islamic government, then we shall try to obligate him to some Islamic commandments and for some other things he shall be left free. For instance, polytheism is the biggest sin to us but if polytheism is the right thing in his creed then we won't stop him. Similarly, pork consumption is absolutely forbidden to us but if he thinks that it is permissible to him then we won't stop him from consuming it. Contrary to that, we shall definitely stop him from stealing, bearing false witness, embezzlement, deceit etc. Because the whole humanity agrees that these things are evil which cause corruption and disorder in the world.

I also agree with what you have said that "we should be happy with whoever is closer to us in moral virtues and commendable qualities". A man's wrong beliefs are one thing but a righteous and morally upright man is in any case better than a wicked and dishonest man. And we can expect

a lot from him that one day he would be ready to accept the right beliefs by realizing the evils of his wrong beliefs.

Yours humbly

*Abul Ala Maududi*

February 1958.

## 5

### **IJTIHAD AND ITS REQUIREMENTS**

A gentleman enquires into the arguments going on in the country about Ijtihad:

Is there not a dire need to open the doors of Ijtihad which have been closed for centuries? Will those principles of Ijtihad, that were laid down a thousand years ago, strictly be applied to the problems of 20<sup>th</sup> century as well? How will the government deal with the situation when the followers of every sub-sect are against changing the Ijtihad done by their Imams and are forcefully in favour of deciding today's issues in the light of those same old explanations and interpretations? If the scholars of every school of thought is appointed for reaching consensus through majority of votes, will the Ijtihad done by them be accepted to all the Muslims? Can the government be forced to act upon it? To what extent, violation, opposition and criticism are tolerable? Can the Islamic government enforce Ijtihad and laws of Ali ibn Talib, Jaffer As-Sadiq and the Imams of the Shias on all the Muslims?

This question contains many questions. I shall answer all these questions point by point.

#### **1. To whom is the door of Ijtihad open?**

A person who perfectly understands the importance and need of running the Islamic system in changing times cannot dispute the opening up of the door of Ijtihad. But just as

important it is to open the door of Ijtihad, it equally demands caution.\*

Doing Ijtihad is not for those who study the Qur'an with the help of translations. Not only are they unfamiliar with the tons of hadith but they also ignore it considering it to be a collection of absurdities. They are not even superficially familiar with all the works of Islamic jurists on the Islamic Law spread over 13 centuries. They even throw it away thinking it to be useless. And on top of that, they start interpreting the Qur'an in the light of Western ideologies and values. If people like this were to do Ijtihad, they would end up distorting Islam and Muslims, who have a jot of Islamic consciousness in them, will not accept the Ijtihad of this kind of people with their conscience being confident of it.

The law made with this kind of Ijtihad can be imposed on the nation only through force and then it is repealed through force too. The conscience of the Ummah will throw it out the same way a human stomach vomits out the fly after ingesting it. There is only one kind of Ijtihad which the Muslims will accept confidently: the Ijtihad of those about whose religious knowledge, piety and discretion Muslims are confident and about whom they are well-aware that these people would not insert unIslamic ideologies and concepts into Islam.

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\* Syed Maududi writes in a letter in this connection: "Given the direction in which the conditions and circumstances are moving, my soul trembles in fear to say something which would make me a party to the responsibility of opening up the door to unbridled Ijtihad". I think that the damage caused by not being cautious will be far more than the damage that is being done because of this cautious attitude of mine. The car is moving towards a steep slope. It will fall into the pit the moment the brakes are loosened. (Letter addressed to Dr. Nejatullah Siddiqi, 4<sup>th</sup> of July, 1962, pg. 29, Islam, Economics And Literature In The Light Of The Letters, compiled by Muhammad Nejatullah Siddiqi, published by Educational Book House, Aligarh, 2000,)

## 2. The principles of Ijtihad and its importance:

Those principles of Ijtihad which were laid down a thousand years ago do not deserve to be thrown away just because they are a thousand years old. Logically analyze what those principles are and could there be any principles for this 20<sup>th</sup> century other than these?

- The first of those principles was that man ought to properly understand the language, its rules, phraseology and literary subtleties in which the Qur'an was revealed. No tell me, is this a wrong principle? Can any person, who is not well-versed in the English language the same way as above, be allowed to interpret the law which is written in English? In English, the omission or commission of even a comma creates huge difference in the meaning sometimes to the extent that the Parliament has to pass an Act just to change the comma. But they demand that those people should interpret the Qur'an who understand the Qur'an with the help of translations and those translations which are in English at that.
- The second principle is that a man should make a deep and wide study of the Qur'an and the circumstances in which it was revealed. Is there anything wrong with this principle? Can someone be authorized to interpret current laws who has only superficially studied any book on law or a translation of it?
- The third principle is that a man should be well-acquainted with the process of implementation carried during the days of the Prophet (peace be upon him) and his right guided successors (may Allah be pleased with them). Obviously, the Qur'an did not reach us travelling in the vacuum. It was brought to us by a prophet of God. And based on this Book, he trained individuals, created a society, established a state, taught this Book to thousands of people and prepared them to live their lives in accordance with this Book. How could it be right to



derive only the words of the laws from the Qur'an by turning a blind eye to this record which is in existence?!

- The fourth principle was that a man ought to be acquainted with the past history of the law. He should know how this law evolved into its present form? How much work was done on it in the past 13 centuries. What methods were adopted for the implementation of the commandments of the Qur'an and the Sunnah in different circumstances in different periods of time and what were the details of the laws that were compiled? How can we maintain the continuity of the evolution of the Islamic Law by doing Ijtihad without studying this history and this work? If a generation were to decide that it would abandon all the works of the previous generations and would build its structure from the scratch then such a kind of foolish decision will also be made by the next generation. A wise nation does not destroy the works of its predecessors rather it works on things which they haven't done by taking their works into consideration. And in this way, the continuity and progress are maintained.
- The fifth principle is that a man should be an honest believer of the soundness of Islamic values, thought-process and the commandments of God and His Messenger. He should look for guidance outside Islam. Rather he should seek guidance from within Islam. This is a condition which every law of the world applies to those who want to do Ijtihad within it.

Indeed, these are the five principles of Ijtihad. If anyone could suggest, with evidence, some other principles for this 20<sup>th</sup> century, then we would be grateful to him for this favor.

### **3. The method of solving juristic differences in an Islamic government:**

With regards to the differences between all the Muslim sects, the Ulama in Pakistan are already unanimous that as

far as personal law is concerned, it will be enforced on the sect which subscribes to it. As far as national law is concerned, it will be in accordance with the school of thought of the majority sect.\* If our representatives were to carefully work on this principle in the Legislative Assembly then sectarian differences will gradually end and our laws can grow in a good way.

#### **4. The Shia school of jurisprudence cannot be the national law in Pakistan:**

The Jafari school of jurisprudence and the Ijtihad of the Shias can be implemented in this country where the Shia sect is in majority. Hence, it is being implemented in Iran. But in Pakistan, it can only be in the capacity of a personal law. How can it be enforced on the Sunni majority?

*(Monthly Tarjuman-ul-Qur'an, December 1961)*

### **6**

## **THE POSITION OF WORDS AND SPIRIT IN IJTIHAD**

Another gentleman writes in this regard:

Will the Ijtihad be done by merely looking at the wordings of the Qur'an, hadith, commandments and laws laid down by past Mujtahids which were enforced during the

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\* Here, Syed Maududi is referring to the 22 points of the Ulama of various schools of thought in Pakistan. These points were confirmed and passed unanimously by a conference chaired by Syed Sulaiman Nadvi and held in Karachi on 21-24 January, 1951. It was decided in point 9 of those 22 points thus:

The recognized Islamic sects shall have total religious freedom within the limits of the law. They shall have the right to provide religious education to their followers. They are freely propagate their thoughts. Their personal affairs shall be decided as per their school of jurisprudence and it would be appropriate to make arrangements for their judge to make such decisions.

periods of the rightly guided caliphs or will it be done taking the right spirit of the verse and the hadith and the circumstances, conditions and inclinations in which those laws were enforced? The preamble has more importance these days than the wordings of the section in the light of which the sections of even the constitution and law are declared null and void. Assume that Muslims fast from sunrise to sunset, but what would be the schedule of prayer and fasting for those Muslims living at the poles where the nights and days are extremely long for months? And assume that in a certain part of the world, cow, ox, camel, goat, sheep, etc. are not available for ritual sacrifice and only pig, rabbit, fish, rhino, elephant, dog etc. are available or if nothing is available then in what form the sacrifice would be there? Would the Shariah be content with depositing the amount of money equivalent to the monetary value of the animal in the Bait-ul-Maal (Treasury), with the right spirit and actual intent, for the welfare and development of the nation?

Answer: Taking both the words and spirit into consideration while doing Ijtihad is very important. But the question of spirit is quite complicated.

If by spirit is meant the overall teachings of the Qur'an, the conduct of the Messenger of God (peace be upon him), the actions of his rightly guided successors and the overall understanding of the jurists of Islam then undoubtedly this spirit is worthy of taking into account and it should not be ignored. But if the wording is taken from the Qur'an and the Sunnah and the spirit is taken from somewhere else then it would be absolutely unacceptable. And taking such a spirit into account implies that we want to rebel against God and His Messenger (peace be upon him) by invoking them.

With regards to prayers and fasting for the people living in the poles, what we have to see is whether the actual objective according to Qur'an and hadith is worshipping God or rendering these two rites of worship at their appointed time the signs of which are mentioned in the

**Qur'an and the Sunnah?** It is a well-established rule in the whole world that it is the objective of the rule which enjoys more importance and if there is something related to the rule adherence to which is stopping from fulfilling the objective of the rule then instead of changing the objective of the rule, the thing or things related to the rule should be changed. Now obviously, as per the Qur'an and the Sunnah, praying and fasting are the real objectives and the schedule for these two rites are set taking the convenience of a large population into account. A large portion of the population lives in those parts of the world where the alternation of day and night happens in 24 hours. And since the majority of the people of these parts do not have watch or clock all the time, in view of convenience, those signs are mentioned for scheduling the rites of worship which are manifested on the horizon or the sky so that every human being could easily schedule his worship.

A very small proportion of human population lives at the poles. This population has to make appropriate changes to its schedule of prayer and fasting as per its conditions in order to follow the commandments. Because adhering to the schedule and performing the rites of worship cannot be done together. Obviously, the commandment of worship cannot be sacrificed for the sake of schedule.\*

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\* Replying to a query about the prayer schedule, Syed Maududi says: 'If the schedule for all other tasks like eating and sleeping can be set, then what is the problem in setting the schedule for prayer? Clearly, people there do not eat their lunch 3 months after breakfast and 6 months after dinner.

When every matter is decided as per its natural requirements then what complication might arise in the case of the Natural Religion? Two principles can be adopted in deciding the prayer schedule in such areas: one, the schedule for prayers there can be set as per the prayer schedule of Mecca. Two, the schedule of the nearest city or settlement can be used for setting the schedule (Zileddin Park, compiled by Muzaffar Baig, Al Badr Publications, Lahore, 1978 pgs. 26-27).

Similarly, Syed Maududi further clarifies in response to a written question:

Only two principles should be kept in view for implementing the commandment of ritual sacrifice:

One, the animal should be the one which is not forbidden in Islam. Two, the animal should be in use in a population as cattle. In this way, the commandment of sacrifice can be implemented in any part of the world. The sacrifice should at any rate be of animal only. And it should not be replaced with money. I have discussed this issue in detail in my paper "The Issue Of Ritual Sacrifice".

*(Monthly Tarjuman-ul-Qur'an, December 1961)*



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'Those parts of the world in which the alternation of day and night occurs in 24 hours, the prayer schedule should be set as per the city or settlement closest to it even if the day or the night is only for 2 hours. However, in areas where the night and day exceed 24 hours, there the prayer schedule should be set as per the schedule of Mecca or Madina. (Rasail 0 Masail, Vol.3, Islamic Publications, Lahore 1976, pgs. 322-323).